IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

FEDERAL INSURANCE COMPANY, as subrogee of BRACEBRIDGE CORP., MBNA AMERICA BANK (DELAWARE), N.A., MBNA AMERICA BANK, N.A., and MBNA TECHNOLOGY, INC.,	)	Civ. No. 03-251-SLR
Plaintiff,	)	
v.	)	
BEAR INDUSTRIES, INC.,	)	
Defendant.	)	

MEMORANDUM ORDER

I. INTRODUCTION

On March 5, 2003, plaintiff Federal Insurance filed this action against defendant Bear Industries alleging liability for insurance payments made by plaintiff to its insured, Bracebridge Corporation, MBNA America Bank (Delaware) and MBNA Technology (collectively "MBNA"). (D.I. 1 at 1-2) Plaintiff alleges that MBNA's office building, Bracebridge IV, flooded due to defendant's negligence in installing the fire prevention sprinkler system. (Id. at 4-6) It further alleges that defendant is liable for breach of contract and warranties associated with the sprinkler system. (Id. at 6-7) This court has jurisdiction pursuant to 28 U.S.C. § 1332 because there is

diversity of citizenship and the amount in controversy exceeds $75,000. (Id. at 2)

On July 29, 2003, this court entered a scheduling order that required all motions to join parties and amend pleadings be filed by September 15, 2003. (D.I. 7) Neither party moved to join additional parties. On September 8, 2004, Magistrate Judge Thynge reset the party's settlement conference for December 22, 2004. (D.I. 55) Consequently, this court postponed the trial, which was scheduled for October 4, 2004, and reset the discovery and motion in limine deadlines. (D.I. 57) Before this court is defendant's motion to dismiss for lack of subject matter jurisdiction and for failure to join indispensable parties. (D.I. 32)

II. BACKGROUND

Plaintiff is an Indiana corporation with its principal place of business in New Jersey. (D.I. 1 at 1) Defendant is a Delaware corporation, with its principal place of business in Newark, Delaware. (Id. at 1)

In September 1997 defendant installed a fire protection sprinkler system in MBNA's Bracebridge IV office building. Defendant was a subcontractor working for L.F. Driscoll Company[1] ("Driscoll"), which was responsible for constructing the

[1]Driscoll is a partnership organized under the laws of Pennsylvania. (D.I. 34 at A-35)

Bracebridge IV building.[2] (D.I. 34 at A-35) Victorine & Samuel Homsey, Inc. ("Homsey"), of Wilmington, Delaware, were responsible for the architectural design of the Bracebridge IV building. (Id.) Systems Approach, a fire suppression company with an office in Newark, Delaware, created the specifications for the suppression system in Bracebridge IV. (D.I. 34 at A-55) Paragon Engineering ("Paragon") was the mechanical engineering firm for the project. (D.I. 48 at 6)

On May 22, 2002, MBNA's Bracebridge IV office building flooded when the coupling/end cap of its fire prevention sprinkler system separated from the 9th floor standpipe. (Id.)

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[2]Defendant's contract with Driscoll indicates defendant was required to:

(1) Furnish and install a complete fire protection system . . . .
(2) Furnish and install fire pump including pipes, valves, and fittings.
(3) Furnish and install one fire pump by-pass line.
(4) Include one jockey pump with controller and associated piping, valves, and fittings.
(5) Sprinkler heads located in common areas shall be installed in the center line of the ceiling tile.
(6) Include all necessary hangers to support own system.
(7) Perform layout of own work. . . .
(9) Include complete wet and dry pipe system as indicated.
(10) Include preaction system as indicated.
(11) Include all heat tracing and insulation of own work.

(D.I. 34 at 40-41) Defendant was not responsible for: "(1) [p]ainting any sprinkler piping; (2) [w]iring of any electrical devices . . . ; (3) [f]ire detection system for pre-action system; (4) [f]ire alarm system; [and] (5) [p]ayment and [p]erformance [b]ond." (D.I. 34 at 41)

Plaintiff contends that the end cap separation and subsequent flood were caused by defendant's negligent failure to install a "roll grooved pipe coupling" at the location of the separation. (Id. at 2) Defendant argues that the separation was caused by Simplex Grinell Fire Protection Company ("Simplex") when it was performing annual sprinkler system tests. (Id. at Ex. 8) Simplex was performing sprinkler system inspections and checks on the day of the flood. (D.I. 1 at 3)

As a result of the flooding, MBNA filed a claim for property damage in excess of five million dollars. (D.I. 48 at Ex. 1) MBNA paid an insurance premium of $100,000. (Id.) Initially, plaintiff did not pay all of MBNA's claim, however, on July 6, 2004, plaintiff made a final payment to MBNA that fulfilled the claim. (Id.)

III. DISCUSSION

Defendant argues that this case should be dismissed because (1) MBNA is the real party in interest and once it is joined, diversity no longer exists; or (2) plaintiff failed to join indispensable parties pursuant to Federal Rule of Civil Procedure 19.[3] (D.I. 33)

[3]Specifically, defendant argues that Driscoll, Homsey, Paragon, Simplex and Systems Approach were not joined.

A. Party in Interest

At issue is whether MBNA must be a plaintiff in the lawsuit. Defendant argues that MBNA is the real party in interest because, at the time the complaint was filed, plaintiff had not paid MBNA's claim in full. Defendant further argues that because MBNA is a party in interest, it must be joined in plaintiff's claim. Plaintiff asserts that MBNA is not a party in interest under Delaware law.

Federal Rule of Civil Procedure 17(a) requires that every civil action be brought by a real party in interest. Rule 17 is intended to prevent a defendant from having to defend two separate actions; the one at issue and a subsequent one involving another party entitled to recover. See 6A CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE & PROCEDURE § 1543 (2d ed. 1990). Whether a party in a diversity suit is a real party in interest is a matter of substantive state law, the issue being whether a party is entitled to enforce a right under state law. See Warner/Elektra/Atlantic Corp. v. Village of Bensenville, No. 83 C 8230, WL 91773 (N.D. Ill. August 4, 1989); Hughey v. Aetna Casualty & Surety Co., 32 F.R.D. 340 (D. Del. 1963).

Delaware courts have held that a party, not fully compensated by its insurance company, has an interest in recovering damages and may bring suit on its own behalf. See

Catalfano v. Higgins, 188 A.2d 357 (Del. 1962). Delaware Code § 8127(b) provides:

> No action, whether in or based upon a contract (oral or written, sealed or unsealed), in tort, or otherwise, to recover damages or for indemnification or contribution for damages, resulting:
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> (1) From any alleged deficiency in the construction or manner of construction of an improvement to real property and/or in the designing, planning, supervision and/or observation of any such construction or manner of construction; or
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> (2) From any alleged injury to property, real, personal or mixed, arising out of any such alleged deficiency; or
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> (3) From any alleged personal injuries arising out of any such alleged deficiency . . .
>
> shall be brought against any person performing or furnishing, or causing the performance or furnishing of, any such construction of such an improvement or against any person performing or furnishing, or causing the performing or furnishing of, any such designing, planning, supervision, and/or observation of any such construction or manner of construction of such an improvement, after the expiration of 6 years from whichever of the following dates shall be earliest:
>
> a. The date of purported completion of all the work called for by the contract as provided by the contract if such date has been agreed to in the contract itself . . . .

At the time plaintiff filed this suit, MBNA had not been fully compensated by plaintiff. (D.I. 1 at 4) Since filing this lawsuit, however, plaintiff has paid MBNA's claim in full. (D.I. 48 at Ex. 1) Although MBNA's claim was not precluded under the statute of repose at the time this action was filed, MBNA no longer has a recognizable claim against defendant because the six year statute of repose has expired. See Del. C. § 1827(b). Therefore, while MBNA had a claim against defendant at the time

this action was filed, it no longer is entitled to enforce its rights under Delaware law. Assuming MBNA should have been joined as a party in interest when plaintiff filed its complaint, MBNA is no longer a party in interest and does not now have to be joined.

Joining MBNA and dismissing plaintiff's claim for lack of subject matter jurisdiction would be a waste of judicial resources. Discovery in this case has been going on for more than a year and a half. From the very beginning, defendant knew that MBNA was a potential plaintiff that had not been joined. Yet defendant waited until the initial close of discovery to file this motion.[4] The fact that defendant filed its motion past the court-ordered deadline, at a time when the claim no longer has merit, counsels against granting the relief requested.

B. Joinder of Indispensable Parties

Federal Rule of Civil Procedure 19 dictates when potential parties to an action must be joined. The rule requires a two-step process. First, a court must determine whether a party is "necessary." See Fed. R. Civ. P. 19(a). A party is necessary when,

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[4]This court is not finding that defendant waived its right to move for lack of subject matter jurisdiction, but merely saying that defendant's point is now moot because MBNA does not have a claim and because dismissing the litigation at this time would waste scarce resources.

> in the person's absence complete relief cannot be accorded among those already parties, or . . . the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may . . . impede the person's ability to protect that interest or . . . leave any of the persons already parties subject to substantial risk of incurring . . . inconsistent obligations by reason of the claimed interest.

Fed. R. Civ. P. 19(a). Second, a court, exercising diversity jurisdiction that would be destroyed by the joinder of a necessary party, must determine if the potential party is an indispensable party. See Fed. R. Civ. P. 19(b). When deciding whether a party is indispensable, a court should consider four factors:

> [F]irst, to what extent a judgment rendered in the person's absence might be prejudicial to . . . those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

Fed. R. Civ. P. 19(b).

Defendant's argument, that without joining the other contractors complete relief cannot be awarded to plaintiff, is without merit. Plaintiff is alleging that defendant was negligent. This determination has little to do with the other contractors. If another contractor's negligence caused the damage, then defendant can make this argument. If a fact finder finds that another contractor's negligence caused the harm, then

it will be finding that defendant either was not negligent or the alleged negligence did not cause the harm. Either way, it is possible to resolve this case without joining additional defendants. In this case, none of the five companies that defendant argues should be joined are necessary parties.[5] Likewise, none of the parties are indispensable, as they are neither necessary nor deprive this court of jurisdiction.[6]

V. CONCLUSION

Therefore, at Wilmington this 6th day of October, 2004;

IT IS ORDERED that defendant's motion to dismiss (D.I. 32) is denied.

Sue L. Robinson
United States District Judge

[5]The court does not address the second category of necessary parties because defendant did not argue that any of the five companies had an interest in the litigation that would be prejudiced by the current adjudication.

[6]There is no allegation that any of them are Indiana companies that would destroy diversity of citizenship between plaintiff and defendant.